Canadian Embassy

Ambassade du Canada

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Washington, DC 20001-2114

January 31, 2005

A. J. Yates, Administrator, Agricultural Marketing Service
Country of Origin Labeling Program
Agricultural Marketing Service, USDA
STOP 0249, Room 3071-S
1400 Independence Avenue SW
Washington, DC 20250-0249

Re: Docket No. LS-03-04 Mandatory Country of Origin Labeling of Fish and Shellfish

Dear Mr. Yates,

The Agricultural Marketing Service (AMS) has invited the submission of comments concerning the Mandatory Country of Origin Labeling (COOL) of Fish and Shellfish; Interim Rule provisions of Public Law 107-171 (*Farm Security and Rural Investment (FRSI) Act of 2002)*. In the attached paper we have outlined specific comments for your consideration. We offer these comments without prejudice to our concern that the COOL provision itself remains fundamentally flawed and will have a trade-restricting effect.

The essence of our comments is that the utility of the COOL provisions is unsubstantiated and it imposes onerous costs on covered commodities with no quantifiable benefits. In addition, it is administratively burdensome, difficult if not impossible to enforce and is trade distorting. Given the above, it is our view that the COOL provision of the *FSRI Act* should be repealed.

If mandatory COOL is implemented, the Government of Canada will have little alternative but to pursue its rights under the North American Free Trade Agreement and the World Trade Organization Agreements.

If you require any clarification, please contact either myself or Fred Gorrell at 202-682-1740.

Yours sincerely,

Susan E. Harper
Minister-Counsellor
(Economic and Trade Policy)

c.c. Desk Officer for Agriculture
Office of Information and Regulatory Affairs
Office of Management and Budget (OMB)
New Executive Building
725 17th Street NW, Room 725
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GOVERNMENT OF CANADA
COMMENTS ON INTERIM RULE

INTRODUCTION

The Government of Canada appreciates the opportunity to comment on the October 5, 2004, *Federal Register* notice of the Mandatory Country of Origin Labeling (COOL) of Fish and Shellfish; Interim Rule (**Interim Rule**). The Interim Rule supersedes the requirements for fish and shellfish set out in the proposed rule on the mandatory COOL provisions of Public Law 107-171 (*Farm Security and Rural Investment (FSRI) Act of 2002)* which was published October 30, 2003, in the *Federal Register* (**Proposed Rule**).

In our view the COOL provision of the *FSRI Act* should be repealed. Without prejudice to this view, the following points highlight observations and concerns that the Government of Canada has regarding the Interim Rule, and has about the application of mandatory COOL more broadly. These concerns expand upon those previously expressed in Canada's submissions on the Proposed Rule (attached for your reference).

INTERIM RULE FOR MANDATORY COOL OF FISH AND SHELLFISH

Implementation and Administration

The Government of Canada acknowledges that from September 30, 2004, when COOL was originally to enter into force, until six months after the April 4, 2005, effective date of the Interim Rule, the USDA is providing a transitional period for affected suppliers and retailers to adjust to these mandatory requirements. The focus on industry education and outreach, in the six months following implementation of the Interim Rule, should assist affected suppliers and retailers by facilitating uniform enforcement and enhancing labeling compliance. However, to fully benefit Canadian suppliers, the USDA's outreach sessions need to include Canadian participants and, to this end, should in some instances be conducted in Canada.

The different implementation dates for fish and shellfish versus other covered commodities, as well as the exclusion of poultry altogether, are a further indication of the contradictions and inconsistencies behind mandatory COOL. The implementation of mandatory COOL for fish and shellfish on April 4, 2005 will focus the "dead weight" incremental costs of implementation onto a single sector. This will place fish and shellfish at an initial competitive disadvantage relative to other covered commodities. All covered commodities will be affected by September 30, 2006, and will ultimately be at a competitive disadvantage relative to poultry.

Improvements to Interim Rule from Proposed Rule

The Government of Canada recognizes that certain requirements set out for the labeling of fish and shellfish in the Interim Rule represent improvements over the Proposed Rule. The broader scope of the definition of "processed food item" in the Interim Rule now excludes certain products from mandatory COOL requirements, such as canned fish which are of particular concern to Canadian fish and shellfish processors. The various examples provided in the definition of "processed food item" also serve to clarify the scope of this provision.

The Interim Rule's labeling requirements for blended products in bulk retail containers provide a measure of flexibility that should address previous Canadian industry concerns about limitations to co-mingling U.S. and Canadian lobsters in retail display tanks. Allowing products of differing origin to be displayed in a single container, so long as the container's label sets out all applicable countries of origin, represents an improvement over the Proposed Rule.

Removing the requirement to list countries of origin alphabetically on labeling will also provide a measure of flexibility for suppliers and retailers in fulfilling COOL requirements.

Outstanding Concerns with Interim Rule

The Government of Canada remains concerned about the recordkeeping and labeling provisions of mandatory COOL that require suppliers, including processors who use covered commodities as manufacturing inputs, and retailers to segregate inventory according to country of origin. These provisions will result in additional costs throughout the value chain and will discourage processors from sourcing input materials from more than one country of origin.

The Interim Rule allows blended products, produced from imported covered commodities that are substantially transformed in the United States, to be labeled with an indication of the countries from which those imported products **may** have originated. This approach provides additional flexibility in labeling and inventory maintenance. However, the Interim Rule is unclear on the rationale for this change from the Proposed Rule, and the extent to which this new provision is intended to mitigate the inventory segregation requirements of U.S. processors. Without an explanation of such rationale and clear examples of substantial transformation processes that could be done without a covered commodity becoming a processed food item, it is difficult to assess the actual implications of this provision.

While the Interim Rule does incorporate criteria, in addition to that provided in the Proposed Rule, to distinguish "farm-raised" fish and shellfish from "wild", clarification is required to determine which of these designations would apply to fish or shellfish held

for shipping (rather than production/grow out) for various periods of time during which they are provided with nutrients.

We would ask that the permitted designations for the "farm-raised" include "aquacultured" which is a specific industry descriptor for fish and shellfish, and accurately describes this non-terrestial method of production. Moreover, the Government of Canada requests that the permitted method of production designations be broadened to include all other fish and shellfish industry recognized descriptors internationally accepted in the trade.

COOL SHOULD BE REPEALED

While the above comments specifically address the provisions of the Interim Rule, it remains our view that the COOL provision of the *FSRI Act* is fundamentally flawed and should be repealed. Mandatory COOL would impose a significant cost burden on industry and introduce complexities at all levels, with no offsetting benefits. First-year incremental costs in the U.S. alone were estimated at $3.9 billion for all covered commodities in the Preliminary Regulatory Impact Analysis, and are estimated at $89 million for fish and shellfish covered by the Interim Rule.

As the USDA's own analysis indicates, COOL has no relation to food safety. COOL is a retail labeling program and as such does not provide a basis for addressing food safety or animal, fish and shellfish health concerns. Mandatory COOL may set a precedent for more extensive and even more restrictive process-oriented labeling programs internationally. These include labeling initiatives for foods made from genetically modified raw materials (GMOs), animal husbandry and welfare practices, or even feed programs. Potential mimicry of COOL-like provisions by a wide range of U.S. trading partners would impose significant additional costs and loss of market share to U.S. export interests.

In addition, there is no evidence that mandatory COOL would bring benefits to consumers as a retail labeling program. The economic analysis provided with both the proposed and interim final rules dismisses the assertion that consumers are willing to pay more for country-of-origin information. As stated in the Proposed Rule, "The lack of participation in voluntary programs for labeling products of U.S. origin provides evidence that consumers do not have a strong preference for country of origin."

Mandatory COOL will clearly have negative implications for trade. It is our view that the measure is more trade restrictive than necessary because voluntary labeling systems are available. Furthermore, as the USDA's own cost-benefit analysis has indicated, the volume of U.S. exports for all covered commodities will decline by even more than U.S. imports from other countries. Mandatory COOL is not in the best interests of the U.S. nor of its closest trading partners as it will seriously compromise the future prosperity of our highly-integrated North American market by raising costs of production unnecessarily, thereby undermining our respective competitiveness in third-country

markets. The only legitimate rule is one that recognizes and promotes the further integration of North American markets.

Industries in both the U.S. and Canada have worked hard over the past 15 years since the Canada-U.S. Free Trade Agreement was implemented to try to make national origin irrelevant in business and consumer decisions. The result of this is that Canada has grown to surpass all other countries as the top importer of U.S. agri-food exports. It would therefore be extremely unfortunate if COOL causes Canadian and U.S. firms to have to distance themselves from what has become a mutually beneficial relationship.

CONCLUSION

While there have been some improvements in the Interim Rule, the COOL provision itself remains fundamentally flawed. The utility of the measure is unsubstantiated. COOL imposes onerous costs on covered commodities, is administratively burdensome, difficult, if not impossible to enforce and is trade distorting. If mandatory COOL is implemented, the Government of Canada will have little alternative to pursue its rights under the North American Free Trade Agreement and the World Trade Organization Agreements.

Canada urges the repeal of the entire COOL provision.